

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANIEL JAFAIN HARRIS,

Plaintiff,

v.

CITY OF MADERA, et al.,

Defendants.

No. 1:22-cv-00660 JLT GSA (PC)

ORDER DIRECTING PLAINTIFF TO SHOW  
CAUSE WHY THIS MATTER SHOULD NOT  
BE SUMMARILY DISMISSED AS  
UNTIMELY FILED AND FOR FAILURE TO  
EXHAUST ADMINISTRATIVE REMEDIES

(ECF No. 20)

PLAINTIFF'S SHOWING OF CAUSE OR, IN  
THE ALTERNATIVE, HIS VOLUNTARY  
DISMISSAL OF THIS MATTER DUE IN  
FOURTEEN DAYS

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Before this Court is Plaintiff's first amended complaint. ECF No. 20. For the reasons stated below, Plaintiff will be ordered to show cause why this matter should not be summarily dismissed as untimely and for failure to exhaust administrative remedies. Plaintiff's showing of cause or, in the alternative, his voluntary dismissal of this matter due in fourteen days.

1 I. RELEVANT FACTS

2 On May 20, 2025, Plaintiff's complaint was screened. ECF No. 17. The complaint  
3 named the City of Madera; the Madera Sheriff Department, and the Madera County Department  
4 of Corrections as Defendants, and it raised general violations of right stemming from Defendants'  
5 alleged violations of government policies related to the California Law Enforcement  
6 Telecommunications System ("CLETS"), and acts of negligence related to his federal rights. See  
7 ECF No. 1 at 1-3. It alleged that the violations of right occurred from September 29, 2016,  
8 through October 23, 2017, and that the alleged violations were ongoing. See id. at 6.

9 In the screening order, the Court found that the pleading failed to state a claim upon which  
10 relief could be granted because it contained no specific facts and because it failed to identify the  
11 governmental policy and/or procedure that Defendants were alleged to have violated. See ECF  
12 No. 17 at 5. In addition, the Court found that Plaintiff's allegations against entities like the  
13 sheriff's department were not actionable under Section 1983 for the actions of an employee, and  
14 that absent a showing of a clear policy or custom, a municipality could not be held liable under  
15 Section 1983, either. Id. at 5-6.

16 Based on these findings, the Court found that the complaint failed to state any claim upon  
17 which relief could be granted, and Plaintiff was given the opportunity to file an amended  
18 complaint. ECF No. 17 at 8-9. He was given thirty days to do so. At that time, Plaintiff was  
19 given instruction with respect to what his amended complaint should contain if he chose to file  
20 one. Id. at 8. He was also sent a copy of the Court's Civil Rights Complaint By a Prisoner form  
21 to use when filing the amended complaint. See id. at 9.

22 II. PLAINTIFF'S FIRST AMENDED COMPLAINT

23 Plaintiff has filed a first amended complaint. ECF No. 20. In it, Plaintiff names the City  
24 of Madera again as a Defendant. See id. at 1. However, he also names two completely different  
25 Defendants who were not mentioned in the original complaint: Luz Romero, the Administration  
26  
27  
28

Supervisor for the Madera Department of Correction, and Christine Najiri<sup>1</sup> of the Madera County District Attorney's Office. Id. at 2-3.

In Plaintiff's two claims in the FAC, he essentially alleges that Defendants Romero and Najiri violated his due process rights and engaged in negligence, illegal misconduct, and the deprivation of his liberty, civil and constitutional rights when, on September 29, 2016, they conspired to and arranged unauthorized visitation between himself and one Klara Bess, for the purpose of entrapment and the gathering incriminating information against him related to a criminal conviction. ECF No. 20 at 3-4.

Plaintiff's FAC also clearly states that there was an inmate appeal process available to him at the Madera County Jail, but that he did not file an appeal or a grievance related to his two claims because "remedies for complaint are unavailable at institution, facility or prison." ECF No. 20 at 2 (errors in original).

### III. APPLICABLE LAW

#### A. Statute of Limitations to File a Complaint

In federal court, federal law determines when a claim accrues, and "under federal law, a claim accrues 'when the plaintiff knows or has reason to know of the injury which is the basis of the action.'" Lukovsky v. City and County of San Francisco, 535 F.3d 1044, 1048 (9th Cir. 2008) (quoting Two Rivers v. Lewis, 174 F.3d 987, 991 (9th Cir. 1999); Fink v. Shedler, 192 F.3d 911, 914 (9th Cir. 1999)). In the absence of a specific statute of limitations, federal courts should apply the forum state's statute of limitations for personal injury actions. Lukovsky, 535 F.3d at 1048; Jones v. Blanas, 393 F.3d 918, 927 (2004); Fink, 192 F.3d at 914. California's two-year statute of limitations for personal injury actions applies to 42 U.S.C. § 1983 claims. See Jones, 393 F.3d at 927. California's statute of limitations for personal injury actions requires that the claim be filed within two years. Cal. Code Civ. Proc., § 335.1.

In actions where the federal court borrows the state statute of limitations, the court should also borrow all applicable provisions for tolling the limitations period found in state law. See

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<sup>1</sup> It is unclear what the correct spelling of this Defendant is. Plaintiff's handwriting is not legible. See ECF No. 20 at 3.

1 Hardin v. Straub, 490 U.S. 536, 539, 109 S.Ct. 1998, 2000 (1989). Pursuant to California Code  
 2 of Civil Procedure, § 352.1, a two-year limit on tolling is imposed on prisoners. Section 352.1  
 3 provides, in pertinent part, as follows:

4  
 5 (a) If a person entitled to bring an action, . . . is, at the time the cause of action  
 6 accrued, imprisoned on a criminal charge, or in execution under the sentence of a  
 7 criminal court for a term less than for life, the time of that disability is not a part of  
 8 the time limited for the commencement of the action, not to exceed two years.

9 Cal. Code Civ. Proc., § 352.1.

10 The equitable tolling doctrine also tolls the statute of limitations while exhaustion occurs.  
 11 Donoghue v. County of Orange, 848 F.2d 926, 930-31 (9th Cir. 1988); Addison v. State of  
 12 California, 21 Cal.3d 313, 318 (1978). Additionally, whether an inmate is entitled to equitable  
 13 tolling is decided by state law except to the extent that it is inconsistent with federal law. Jones,  
 14 393 F.3d at 927. The Ninth Circuit has recognized that prisoners relying on the California statute  
 15 of limitations are entitled to equitable tolling of the statute of limitations while completing the  
 16 mandatory exhaustion process. See Brown v. Valoff, 422 F.3d 926, 943 (9th Cir. 2005). “Where  
 17 exhaustion of an administrative remedy is mandatory prior to filing suit, equitable tolling is  
 18 automatic: ‘It has long been settled in this and other jurisdictions that whenever the exhaustion of  
 19 administrative remedies is a prerequisite to the initiation of a civil action, the running of the  
 20 limitations period is tolled during the time consumed by the administrative proceeding.’”  
 21 McDonald v. Antelope Valley Cmty. Coll. Dist., 45 Cal. 4th 88, 101 (2008) (quoting Elkins v.  
 22 Derby, 12 Cal. 3d 410, 414 (1974); cf. Code Civ. Proc. § 356 [tolling applies whenever  
 23 commencement of an action is statutorily prohibited].)

#### 24 B. Exhaustion Requirement

25 The claims of inmates who challenge their conditions of confinement are subject to the  
 26 Prison Litigation Reform Act (“PLRA”), 42 U.S.C. § 1997e(a). “The PLRA mandates that  
 27 inmates exhaust all available administrative remedies before filing ‘any suit challenging prison  
 28 conditions,’ including, but not limited to, suits under [Section] 1983.” Albino v. Baca, 747 F.3d

1 1162, 1171 (9th Cir. 2014) (brackets added) (quoting Woodford v. Ngo, 548 U.S. 81, 85 (2006));  
 2 Rhodes v. Robinson, 621 F.3d 1002, 1005 (9th Cir. 2010) (“[A] prisoner must exhaust his  
 3 administrative remedies . . . before that complaint is tendered to the district court.”). There are  
 4 few exceptions to this rule. See Ross v. Blake, 578 U.S. 632, 643-44 (2016) (exceptions to  
 5 exhaustion requirement).

6 “Under § 1997e(a), the exhaustion requirement hinges on the ‘availab[ility]’ of  
 7 administrative remedies: An inmate . . . must exhaust available remedies, but need not exhaust  
 8 unavailable ones.” Ross, 578 U.S. at 642 (brackets in original). In discussing availability in  
 9 Ross, the Supreme Court identified three circumstances in which administrative remedies were  
 10 unavailable: (1) where an administrative remedy “operates as a simple dead end” in which  
 11 officers are “unable or consistently unwilling to provide any relief to aggrieved inmates;” (2)  
 12 where an administrative scheme is “incapable of use” because “no ordinary prisoner can discern  
 13 or navigate it;” and (3) where “prison administrators thwart inmates from taking advantage of a  
 14 grievance process through machination, misrepresentation, or intimidation.” Ross, 578 U.S. at  
 15 644. “[A]side from [the unavailability] exception, the PLRA’s text suggests no limits on an  
 16 inmate’s obligation to exhaust – irrespective of any ‘special circumstances.’ ” Id. at 639.  
 17 “[M]andatory exhaustion statutes like the PLRA establish mandatory exhaustion regimes,  
 18 foreclosing judicial discretion.” Id. at 632.

#### 19 IV. DISCUSSION

##### 20 A. Plaintiff’s Complaint is Untimely

21 Irrespective of the fact that Plaintiff’s FAC impermissibly raises claims that were not  
 22 raised in the original complaint – which is also grounds for dismissal (see generally George v.  
 23 Smith, 507 F.3d 605, 607 (7th Cir. 2007)) (stating no unrelated claims may be filed in amended  
 24 complaint), this matter must be summarily dismissed for two independent threshold reasons.  
 25 First, the FAC is untimely. In both claims, Plaintiff states that the incidents in question occurred  
 26 on September 29, 2016. See ECF No. 20 at 3-4. Thus, absent any tolling to exhaust  
 27 administrative remedies – which Plaintiff’s FAC clearly states he never did – Plaintiff’s original  
 28

1 complaint should have been filed no later than four years from that date, which is September 29,  
2 2020.

3 Plaintiff's original complaint was signed, and thus, constructively filed on April 29,  
4 2022.<sup>2</sup> See ECF No. 1 at 7 (signature date of complaint). This was a full one year and seven  
5 months past September 29, 2020, the last day that Plaintiff was able to file a complaint in this  
6 Court. For this reason, this case should be summarily dismissed.

7 B. Plaintiff Has Failed to Exhaust Administrative Remedies Without Excuse

8 Plaintiff's FAC must also be dismissed because in it, he has failed to provide a viable and  
9 plausible excuse under Ross for not having exhausted his administrative remedies in the Madera  
10 County Jail prior to filing his original complaint in this Court. See generally ECF No. 20.  
11 Plaintiff's contradictory statements that there is an administrative remedy process at the jail, but  
12 that he did not use the process because "remedies for complaint are unavailable at institution,  
13 facility or prison," (see id. at 2), without more, does not, consistent with Ross, sufficiently excuse  
14 the fact that he has not exhausted his administrative remedies. For this reason as well, Plaintiff's  
15 complaint must be summarily dismissed.

16 V. CONCLUSION

17 In sum, because: (1) Plaintiff's complaint was filed well beyond the four-year statute of  
18 limitations period, and (2) it is clear on the face of the FAC that Plaintiff did not exhaust his  
19 administrative remedies, and that he has provided no viable excuse under Ross for not having  
20 done so, the Court must recommend that this matter be summarily dismissed. Prior to doing so,  
21 however, Plaintiff will be ordered to show cause why it should not be. As an alternative to filing  
22 the showing of cause, Plaintiff may voluntarily dismiss this matter pursuant to Federal Rule of  
23 Civil Procedure 41(a)(1)(A)(i). Plaintiff will be given fourteen days to take either course of  
24 action.

25 \_\_\_\_\_  
26 <sup>2</sup> The signing date of a pleading is the earliest possible filing date pursuant to the mailbox rule.  
27 See Roberts v. Marshall, 627 F.3d 768, 769 n.1 (9th Cir. 2010) (stating constructive filing date for  
28 prisoner giving pleading to prison authorities is date pleading is signed); Jenkins v. Johnson, 330  
F.3d 1146, 1149 n.2 (9th Cir. 2003), overruled on other grounds by Pace v. DiGuglielmo, 544  
U.S. 408 (2005).

1 Accordingly, IT IS HEREBY ORDERED that within fourteen days from the date of this  
2 order, Plaintiff shall SHOW CAUSE why this matter should not be SUMMARILY DISMISSED  
3 as untimely in violation of the Statute of Limitations and for failure to exhaust administrative  
4 remedies.

5 **Plaintiff is cautioned that failure to timely respond to this order within the time**  
6 **allotted may result in a recommendation that this matter be dismissed.**

7 **Plaintiff is further cautioned that absent exigent circumstances, no requests for**  
8 **extensions of time to respond to this order will be granted.**

9  
10  
11 IT IS SO ORDERED.

12 Dated: **July 29, 2025**

**/s/ Gary S. Austin**  
UNITED STATES MAGISTRATE JUDGE